

APPENDIX L.

Public Comments in the Disparity Study Process

As part of the disparity study process, GDOT worked with the study team to solicit public comments about local marketplace conditions, its implementation of the Federal DBE Program as well as the draft version of the disparity study report. Groups and individuals were able to make verbal comments during three public comment meetings and submit written comments via comment cards at the meetings, through online submissions via the GDOT website, and through written communications provided in person, by mail or by email.

The public comment meetings were held during the week of May 21 at GDOT offices in Atlanta, Thomaston and Savannah. The Atlanta meeting was attended by 48 individuals. Those attending included the owners of certified DBE firms, other business owners and managers, as well as the representatives of construction trade organizations, local county government and other individuals interested in the outcomes from the Disparity Study. The Thomaston meeting was attended by two individuals, one owner of a certified-DBE firm and the other a DOT employee. The Savannah meeting was attended by seven individuals, including owners of certified DBEs, other business owners and managers, a DOT employee, local government officials and local planning board staff members.

The written comments collected at the public meetings, other written comments and transcribed oral comments from the public meetings were analyzed and categorized into key areas. The following is a summary of the comments related to the study.

Entry and Advancement of Firms within the Transportation Contracting Industry

Several of the statements at the public comment meetings addressed DBEs' concerns regarding their entry and advancement in their respective fields. The statements could be categorized into:

- A perception that DBEs were/are not given opportunities to perform the work; and
- Barriers that businesses faced in entering the market were based on pre-existing networks, or a culture of "good old boys."

One recently certified DBE stated, "I've been here 40 years ... we're not getting the work. We are not being offered the work, but then we are not being able to receive the work, no matter how much you bid or how you bid it. We're not getting the work."

A similar comment was expressed by a female business owner of a DBE-certified trucking firm. "One of the things I want to discuss here is how difficult it has been for me to get work. I have given bids on a lot of the jobs that come out that's DBE. I have not had fair opportunities to do work. The contractors where I'm from will go outside of my city to bring truckers into the city to do the same thing that I'm there to do.... They will ... overlook the ones that's within the city that does the same thing, and go outside of the city and get their friends or their friends' friends or whatever the case may be. And one of the things that we're really trying to break in [our city] is the 'good ol boy' system."

One DBE-certified demolition firm expressed concerns about not only the use of people from pre-existing networks but also having witnessed instances when the DBE firms selected to perform the work were not those performing the work onsite. “My other problem is that you have these large firms who mostly get the jobs and they use the same minority firms all the time. It’s a good old boy network in reverse. ‘I got my man we’re going to go in and do it.’ And they don’t to go in and do the job. I’ve been in on jobs — where the actual person who does the job is nowhere near around the job. So it’s a great thing that we’re being allowed to participate but within the participation and disparity study, they should also maintain that ‘okay, if you’re going to participate, then you need to work.’ ” When asked to provide further information, the DBE referenced a project when the prime offered him a flat rate to allow the prime to complete the project with its own staff.

Another owner of a DBE-certified trucking firm, who serves as a board member for a state construction association, also expressed concerns about the pre-existing networks and how this impacts the ability of different contractors to enter the market. “A couple of concerns that we have is the issue that some of the speakers alluded to before is the issue of a very tight-knit community of getting contracts over and over. While we might qualify for subcontracting work, they really rule.”

Among the written comments submitted, there were similar themes regarding pre-existing networks and lack of opportunities.

- A minority-owned certified-DBE firm that performs construction-related work stated via an online comment that they were unable to bid on several contracts. “We did not even get a chance to bid on our trade (concrete) with the prime that was awarded the project ... why? Because they partnered with [a DBE prime] to meet minority requirements. We find that allowing out-of-state vendors to come into Atlanta and team up with DBE primes is very deflating... To begin with, local DBE primes already know and are familiar with who they want on the job with them...”
- A written comment submitted during the Atlanta public meeting by a DBE-certified construction-related firm stated, “Prime contractors don’t treat DBEs fairly. They give the jobs to their friends and white females. Blacks are shut out. If they do give us work, it is very little.”
- More than one firm believed that they would not have been able to enter the market were it not for the DBE program. A construction-related firm that is minority female-owned and DBE-certified provided written comments during the Atlanta public meeting, “If I ask or inquire about projects that do not require a DBE goal I am told there will be no need for my company to submit a quote, a decision for my scope of service will be made after the job is awarded. Almost always, I will ONLY get work once there is a shortage of other contractors.” Another minority female-owned DBE-certified construction-related firm submitted a similar written comment during the Atlanta public meeting, “I believe my company would not benefit from any form of work were it not for the fact that I am a DBE-certified company.”

Other firms were not supportive of the race- and gender-conscious portion of the Federal DBE Program.

- A written comment submitted at the Atlanta public meeting by a civil engineering firm providing geotechnical consulting services felt they had been prevented from conducting work because of competing DBE-certified firms. “We do a lot of work with cities & counties and the Georgia Hwy Contractors. However, we have basically been blocked from doing business by [name of DBE firm]. I am glad to see a small business element. We would like to be a bigger part of the system.” The owner went into further detail during his testimony at the public meeting. “I’ve been in business for 14 years and I’m a white male. I’m not a DBE, okay? And I’m thinking about it, though, depending on what y’all decide. If y’all say 30%, I’m going to line them up. Anyway, we have been doing some engineering services, providing engineering services to the state, and unlike a lot of these people that have stepped up here, apparently they’ve got DOT work. We don’t. And what’s blocked us from DOT work is the DBE process. There is such a limited amount of geotechnical consultants. If one or two get certified DBE in the engineering realm, and so there seems to be a lot of disparity. Our company has gotten no work from DBE. Not from the DOT. Not that we haven’t presented our company or bid on work. You know, but because there are companies out there that are DBE and there’s only maybe 50 or 60 geotechnical firms in the state, it’s such a small quantity of firms out there, if one or two of them gets certified as DBE, that completely blocks us from getting any, almost.”
- Firms that questioned the success of the DBE Program included an online comment submitted by a minority female-owned certified DBE professional services firm. “Unfortunately, my firm has been certified as a DBE firm for many years and during that time ... not once have I received a phone call, a referral or lead to-date, leading me to business and sales for being certified. Honestly, at this point, I keep renewing the paperwork ‘just in case’ I have a prime contractor or business who is interested in this certification and it is ready and available.”

Access to Business Credit, Bonding and Insurance

A few oral or written comments pertained to access to business credit, bonding and insurance.

The representative of a state DBE trade association during the Atlanta public meeting argued against using the current state standards for bonding but rather the federal government standards. He stated, “I’m representing a little over 126 DBEs have signed up with our association to represent them I’m currently looking at addressing the issues of bonding and insurance. As a group, we have found that the GDOT’s policy regarding bonding is one that is currently non-supportive of small business owners. In particular, GDOT uses the state standards for bonding and not the federal standards for bonding, and we would like to make that in written format, recommend to GDOT they use the federal standards for bonding criteria... However, there are a few things that I believe the Department can focus on... We have found that prime contractors are not interested in any way in assisting DBEs in obtaining bonding or lines of credit or insurance, and this should be of great interest to them. I have spoken to most of them and they have had opportunities to use their excess lines of credit or

their excess capacity for bonding and they have used a lot of that excess capacity, but they say that GDOT restricts them in those areas.”

The other comment regarding bonding during the public meeting was related to how a prime had used it as a barrier for bidding on contracts by requiring a DBE to provide a bond fee. “I also had to pay a bond fee of \$300 and something dollars, and I had to pay a registration fee to register with his company to bid this work.”

There was one written comment provided by a statewide non-profit advocacy association for small, female DBEs. “The Alliance believes that the DBE capacity may be undefined and untapped based on the previous barriers that minority DBE firms face when starting a business such as the inherent and systemic barriers that exist pertaining to the bank lending, bonding and packaging of contracts.”

Success of Businesses

One of the written comments submitted at the Atlanta public meeting by a minority-owned, DBE-certified engineering firm stated that they believed GDOT has negatively impacted their business through discrimination against small businesses because of the GDOT requirements. The statement read, “I contend that the Georgia DOT blatantly discriminates against small companies... and as a result we lose participating on prospective jobs, not only from the DOT but from Cities, Counties and others... The Georgia DOT requires that firms employ two licensed Engineers in order to be deemed qualified to perform this, and others, type of service... Now, the cities, counties and others, when requesting qualifications, require firms to provide their Georgia DOT qualifications. Therefore, even though I have performed multiple similar projects, I cannot even offer my services, because of an absurd requirement by the Georgia DOT.”

During the public meeting, there were also comments surrounding the perception that prime contractors purposely bid low on contracts with the intent of being able to execute a change order after beginning to perform the work. Both the owner of a certified-DBE trucking firm as well as the representative for a state construction trade association expressed these concerns. They gave the following examples, “They can do a job for less and then what do they do? A change order, which the state allows and which the state has law that governs the change order because they can show proof that they are not making the money on that job, that they are run at a loss, saved a bit two million, they can get 2.5 million dollars.” Another perspective, “A number of times there is concern that primary contractors are coming forward and they’re bidding too low on the jobs and that there is no profit margin and no money can be made. Well, what happens with those contracts once the successful bidder is awarded, and I think as an issue of transparency, any change orders, any differences in the bid amount should be posted online so that there is more accountability in that overall process and there’s more fairness. A large contractor may be able to theoretically afford to lose money on a contract, but a small business contractor has to make money on every single contract they participate in, and moreover, if someone is getting a contract awarded and then they’re able to charge more money for that contract by the close of that contract, then that’s not fair to the other bidders and it’s certainly not fair to the tax payers.”

Many of the DBEs expressed concerns regarding how they interacted with the primes. While not explicitly stated, many of these interactions had a direct impact on the success of their businesses. Some of the problems cited included failure to provide safe working conditions, the withholding of fuel surcharges, primes not providing contracts, withholding retainage on GDOT contracts and the prime's use of DBEs only on selected parts of the work. Comments regarding safety included the following:

- The DBE-certified owner/operator of a trucking firm, who also serves as the president of a trucker's organization, stated during the public meeting held in Atlanta, "When we're working at night, the conditions are very dangerous. I think they should have some marshals. Also, when they are milling the roads, it's too deep."
- Another trucking firm owner (certified DBE, minority- and woman-owned, construction-related firm) echoed comments regarding safety and provided a greater context in her comments. "It's caused from rushing, drivers trying to make an extra dollar, and they're killing people on the roadway because they are trying to make an extra dollar for their family because they are not being treated fairly. So before you know it, I-20 in Newton County, they have several accidents on their projects. I'm not sure if DOT is aware of it. There is not enough enforcement on the roadway, especially at night when you're doing night work on these interstates. There should be police. There should be other traffic controls out there to give the truckers a green light or a red flag, whatever we need. There is no help out there. You're pretty much on your own, so it's like a dog eat dog. All the contractors are concerned about is putting that asphalt down. They don't give a damn about safety, and we need to look into that."
- Additional comments made by another trucking firm owner also shared the impact that safety is having on her business. "One very important thing that I wanted to talk about was safety It's been a very, very serious condition running on that I-20 job. We've lost trucks. We've lost lives Our insurance, everything is being affected because we have wrecks out there. We have guys backing up into guys. There is no safety out there at night."

With regard to working without a contract, one DBE-certified trucking firm owner expressed concern with the lack of recourse in the instance of a problem because some primes do not issue contracts. "They'll award you a project, but they won't give you a contract so you have no legs to stand on. Whenever there is a problem and you contact the contractor, they say well, you don't have a contract with us but yet you are still doing the work I don't understand that so I'm asking DOT if they can hold these contractors, these big rollers, to issue contracts to the subs so we have something to go forward to a lawyer or to whoever we want to address these issues with."

During the public comments, one minority-owned, certified-DBE construction services company said that she had a problem with the prime's holding a retainage for an extended period of time. "When we do a job of any significant size — now I can do a smaller job and allow them to take out 10 percent and hold it until the job is over, which might be six months, but I have just started a job that is going to be 30 months and it does have GDOT money with it, and it said in my contract, 10 percent retainage and until the end of the project. My company and I doubt that most small companies could possibly do that, especially with the slim margins that we're working with."

One certified DBE trucking firm owner said that he was only given selected parts of the work on a project until he reached the quota for DBE participation, cutting him off from more lucrative parts of the project. “I’ve worked on jobs before where I would consider I did the dirty work. I did the milling. I did the asphalt, everything by the load, by the ton, and when the time come to do the hourly job, which is the shoulders, they cut me off and said, look, you’ve fulfilled your DBE quota. I did the milling by the load. I did the asphalt by the ton. And when the time comes to do the dirt shoulders, which is by the hour, I was taken out of the project because I had fulfilled my quota.” In written comments submitted at the Atlanta public meeting, a minority female-owned, DBE-certified engineering-related firm wrote, “Work assigned to DBEs is limited to those activities the prime DOES NOT want to do themselves.”

Program Recommendations

An engineering-related certified DBE firm expressed the desire to spread the DBE goal evenly across projects in terms of scope of work and timeline through written comments submitted at the Atlanta public meeting. The comment read, “On Transportation Enhancement projects apply DBE goal for each contract — including planning and design phases, not just construction. On task order of multi-year duration, ensure DBE goal is applied each year and awarded each year to the DBEs.”

Other written comments included the following:

- “Level the playing field for Minority, Women and Small Business should be allowed to purchase goods and products off statewide contracts.”
- “Minority Women and Small Business should not punished by reporting discrimination and unfair treatment in the workplace. A non-partisan review committee should be in place.”
- “There should be some type of penalty for prime contractors who misuse and abuse the system.”
- “Project should not [be] lumped together so large firms can bid on them unless projects are equally broken down to give small firms a chance to bid as prime.”

A comment given by a prime contractor in the construction-related services field argued against the DBE program in its entirety. “We think that the DBE and minority programs should be DISCONTINUED. Everyone should have fair access to the work without any consideration given to race and gender. The work is going to contractors who are not as capable of doing the job just because they are black owned or woman owned. It is reverse discrimination. Stop the REVERSE DISCRIMINATION.”

In its written comments, the Georgia Highway Contracting Association made the recommendation that GDOT consider business development programs that help develop MBE/WBE contractors rather than raising the existing goal.

A public affairs law firm made the following recommendations concerning GDOT's implementation of the Federal DBE Program:

- “Continue to provide training and other assistance regarding bonding, financing, business management, technology, business growth and development, and information on how to do business with GDOT.
- Maintain public's access to prime contractor, subcontractor and DBE directories on the GDOT website. GDOT should also continue to maintain a searchable DBE database on its website that allows prime contractors to identify DBEs based on name, sub-industry and location.
- Continue posting, on the GDOT website, lists of potential bidders for construction contracts that are available to DBEs and other small businesses seeking subcontracting opportunities. Firms interested in subcontracts on a project can identify themselves to potential bidders on the GDOT website.
- Continue to enforce GDOT's prompt pay policy which requires that prime contractors pay their subcontractors for satisfactory performance of their work no later than 10 days from receipt of each payment from GDOT.
- Create an independent GDOT Mentor-Protégé program which pairs subcontractors with prime contractors to assist in management, financial and technical assistance and the exploration of joint venture and subcontractor opportunities for GDOT contracts.
- Relax bonding requirements for projects less than \$250,000. Please note that this is larger than the originally planned \$25,000 cut-off. Such a low number would make this provision ineffective.
- Unbundle large contracts to open more contracting opportunities for SBEs.
- Require prime contractors to pro-rate payment and delivery schedules, where feasible, to minimize cash flow problems faced by small firms.
- Increase enforcement of requiring prime contractors to show good faith efforts in soliciting and accepting bids from SBEs.
- Require prime contractors to maintain records on all subcontracting performed by SBEs.
- Require that a contractor receiving a federally-funded contract with GDOT to agree that small businesses will have the maximum practicable opportunity to participate in the contract consistent with its efficient performance.
- Provide specifications and requests for proposals to the SBE community in a timely manner to allow SBEs adequate time to develop responsible and responsive bids.

- Provide information on GDOT’s contracting needs and offer instructions on bid specifications, procurement policy, procedures and general bidding requirements.
- Use debriefing sessions to explain why certain bids were unsuccessful.
- Maintain records showing specific efforts to identify and award contracts to SBEs and establishing a monitoring system to ensure that all contractors, subcontractors, consultants and vendors comply with contract specifications related to SBE utilization.
- Establish a race-neutral small business set-aside, similar to the federal program, for prime contracts under a stated amount (i.e. \$3 million).
- In multi-year design-build contracts or other large contracts (e.g., for “megaprojects”), require bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
- On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
- Identify alternative acquisition strategies and structure procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.
- Revise Prequalification Procedures for Prime Contractors. GDOT should work to keep the prequalification process from “perpetuat[ing] disparities for minority-owned firms, which have been relatively unsuccessful in obtaining GDOT construction prime contracts compared with other groups.” The Report found that this process disadvantages smaller, younger firms and in particular has “an added negative impact on minority- and women-owned firms.”
- Expand the construction contractor assistance program. The Report identified minimal assistance for “established construction firms seeking to grow into larger prime contractor roles.” Focusing on established construction companies interested in further developing their capabilities, GDOT might consider ways to further expand one-on-one counseling, mentor-protégé programs, and referrals to experts in finance and bonding. This assistance would be open to all small firms regardless of race or gender.
- Implement a DBE preference program, similar to local preference programs found in several Georgia cities and counties, to encourage the use of DBEs as prime contractors. Such a program could have a preference allowance of 5-10% of the bid price for DBEs.
- The DOT should enforce its rules which bar prime contractors from withholding retainage from subcontractors.
- Expand technical assistance programs, such as small business training. Programs provide general information and assistance for business start-ups and growing businesses.

- Increase access to small business financing.
- Expand programs such as the SBA Surety Bond Guarantee Program which provide bid, performance and payment bond guarantees for individual contracts.”

Overall DBE Goal

There were several comments in both the public meetings and submitted in written form that addressed the current overall DBE goal of 12 percent and expressed support for increasing the current goal. The percentage suggested for an increase ranged from 13.5 percent to more than 30 percent.

A DBE-certified owner/operator of a trucking firm, who also serves as the president of a trucker’s organization, stated during the public meeting held in Atlanta, “I am willing to say the allocation should be increased from 12 percent to at least 30 percent. I think it’s a shame that from 1980 to 1990, it only went up 2 percent.”

The female owner of a DBE-certified trucking firm spoke about how realistic the goal was in terms of income for DBE firms given the rates paid by primes to subcontractors, “I think because we are forced to work for such low prices, that 12 percent is really not being met. It really should be 8 percent or even lower if we were to take the calculation, because we are working for close to 40 percent under what we should working for”

In addition to the DBE firms, there were several other interested individuals who attended the public meetings and supported increasing the goal. One of the individuals at the Atlanta public meeting included a local county director for contract compliance. During her comments, she said, “I would like to say that we support the efforts of increasing the goal and pretty much agree with many of the comments that we hear today because there are a lot of small businesses who are not getting the work they deserve.”

Also among the written comments provided, a minority-owned DBE-certified construction-related supplier stated the following, “We feel very strongly that the GDOT DBE program is working and should continue with an increase of the percentage of participation. There are many firms like mine who employ thousands and without this participation being mandated, we will be left with the sad choice of closing our companies or laying off employees... I hope you will find it in your authority to do everything possible to increase the level of participation and continue to promote the DBE Program.”

Written comments and a detailed analysis in support of increasing the goal were submitted by a public affairs law firm on behalf of their client, a DBE-certified general contracting and construction management firm. A selected portion of their statement reads, “The BBC’s 19.8% figure represents the disparity between the current perceived availability of women- and minority-owned firms and their utilization...the overall DBE goal should be raised to 26.3%. An overall DBE goal in excess of 26.3% is fully supportable from the perspective of availability and capacity and should be implemented in order to counteract the depressed business ownership rates and to generate sustained minority business creation and growth.”

A minority female-owned, DBE-certified construction-related and consultant-related firm submitted the following comment, “The DBE program is not new. It has been in place more than 25 years and the original goal was 10% and 25 years later we have a goal of just 12% and not even meeting it. In almost 30 years the goal has only increased 2%. Our present system allows for 10% of the population to get 90% of all the contracts awarded in this industry. We must correct this failure and ask GDOT to approve a DBE goal of 30%.”

A DBE-certified, WBE construction-related supplier submitted the following written comments during the Atlanta public meeting, “The DBE goal should be increased, because over the past 7 years it has remained the same, which is 12% I think that a fair and more than reasonable goal should be at least 13.5 – 15%.”

Another minority female-owned, DBE-certified construction-related firm submitted the following written comments during the Atlanta public meeting, “The current goal of 12% is grossly under what is considered a fair margin for the population of Metro Atlanta. We need an increase!”

An online comment submitted by an engineering-related firm read, “I support the recommended GDOT DBE goal of 30%.”

Not all individuals or groups making comments were supportive of an overall DBE goal higher than 12 percent. In its written comments, the Georgia Contracting Association was not supportive of increasing the overall DBE goal. The Association indicated that “raising the existing goal would only result in a further overconcentration of MBE/WBE subcontractors. MBE/WBE subcontractors currently receive 35% of the subcontract dollars on GDOT construction projects.”

Comments Concerning Study Methodology

Several of the written comments asked questions or expressed concerns regarding the methodology of the disparity study. Some of the comments were helpful in pointing out portions of the report that were unclear or warranted further explanation. The disparity study team reviewed these comments and made certain additions or changes to the report to better clarify specific aspects of the study approach. There were no substantive changes to methodology or results as part of this process.

Two organizations making comments, the Georgia Highway Contracting Association and the public affairs law firm Reece & Associates, expressed divergent concerns about the availability analysis in the disparity study.

Georgia Highway Contracting Association. After reviewing the draft report, the Georgia Highway Contracting Association questioned whether it was proper to count firms as available if they were not registered with GDOT. The Georgia Highway Contracting Association also took issue with the fact that availability information was determined through interviews with firms, stating that there was “no independent verification of capacity or capabilities of the firms.” The study team responds as follows:

- The study team expanded Chapter 5 of the disparity study report to now directly explain why registration with GDOT was not used as the source for the availability analysis or as a criterion to be used in the availability analysis (see page 6 of Chapter 5).
- The explanation in Chapter 5 of why interviews were used has now been expanded (much of the information needed for the availability analysis could only be obtained by directly collecting the information directly from firms).
- Appendix C discusses how different interview questions were used to confirm or verify information indicated in the Dun & Bradstreet data. (Primary type of business is one such example.) There was additional confirmation of interview results through follow-up interviews with a sample of companies and other means.

The Georgia Highway Contracting Association also suggests that the disparity analysis consider all non-GDOT revenue sources in the utilization data. Chapter 4 and Appendix F do include data on total revenue (including non-GDOT sources) for minority-, women- and majority-owned firms. These analyses of total revenue were included in the draft report and remain in the final report. The disparity analysis for GDOT contracts, however, still focuses on contracts awarded by GDOT and local agencies that receive funds through GDOT. Chapter 6 explains why.

Reece & Associates. Drawing upon the discussion in Appendix C of the draft disparity study report, Reece & Associates pointed out aspects of the availability methodology that might cause minority- and women-owned firms to be underrepresented in the availability analysis. The points made by Reece & Associates in its comments were acknowledged in the draft disparity study report (and remain in the final report).

In its comments, however, Reece & Associates took issue with how strongly the disparity study worded the discussion concerning potential for such underrepresentation of MBEs and WBEs in the availability analysis. The draft report indicated that such underrepresentation of MBE/WBEs in the availability analysis was “possible,” and Reece & Associates recommended a stronger word than “possible.” The final report retains the original language concerning potential underrepresentation of MBE/WBEs, but acknowledges Reece & Associates comments in Chapter 5 of the report.